

REMARKS

United States Serial No. 10/584,869 was filed on April 20, 2007. Claims 1-20 are currently pending in this application. Applicants respectfully request reconsideration and allowance of claims 1-20.

Amendments to the Specification

The Specification, from the paragraph bridging pages 3 and 4 through the paragraph bridging pages 4 and 5, has been amended in order to correct numerous typographical errors; no new matter has been added. It appears that an optical character recognition in the international phase resulted in the transcription errors.

35 U.S.C. § 103

Claims 1-4, 6-12, 15 and 17-20 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Pub. No. 2002/0161071 to Mills, et al. ("Mills") in view of U.S. Patent No. 6,514,334 to Perry, et al ("Perry"). Applicants have assumed that this rejection applies to claims 1-20, as claims 1-20 are all discussed in the paragraphs on pages 2 and 3 of the Office Action. While the Office admits that Mills does not teach a composition which contains at least 13 weight % lime, it is alleged that Perry teaches a cementitious composition where lime may be present in amounts greater than 62 weight %.

Applicants respectfully submit that Mills and Perry are not properly combinable in order to establish a prima facie case of obviousness. MPEP § 2141.03(VI) states that "[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would teach away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984)". MPEP at 2100-126 (emphasis in original). Further, MPEP § 2143.01(V) states that, "[i]f proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)". MPEP at 2100-140.

The present specification discloses that, in order to achieve the desired high early strength provided by the presently claimed settable mixture, formation of Ettringite is necessary. At page 4, lines 22-26 (as amended herein), it is stated that "Ettringite is a calcium trisulphoaluminate having 32 molecules of water of crystallization and has the formula $3\text{CaO} \cdot \text{Al}_2\text{O}_3 \cdot 3\text{CaSO}_4 \cdot 32\text{H}_2\text{O}$. Ettringite is produced by the hydration of cementitious materials containing calcium aluminate and calcium sulphate" (emphasis added). Mills contains a similar disclosure. Therefore, in order for the present settable mixture, as well as that of Mills, to be suitable for their intended purposes, the composition must contain calcium sulphate.

Perry does not disclose the use of calcium sulphate, and the composition of Perry cannot form Ettringite. Thus, if the composition of Perry, taken as a whole, were to be combined with Mills, the resulting composition would not contain calcium sulphate, as this component is absent in Perry, and therefore could not form Ettringite. The composition would not be able to obtain a high early strength. For these reasons, combining Perry with Mills renders Mills unsatisfactory for its intended purpose, and there is no suggestion or motivation to modify Mills according to Perry in order to increase the lime content of the Mills composition.

Also for the above reasons, a person of skill in the art would not look to Perry for ways to modify Mills in order to obtain an even earlier high strength cementitious composition than that disclosed in Mills. Mills makes no disclosure of how Ettringite enables high early strength, while the present specification shows that additional lime will provide a settable composition with an even earlier high strength than that of Mills. Perry provides no motivation to reduce the time needed for Ettringite formation by adding excess lime, because Perry does not contain the components necessary to form Ettringite. For all of these reasons, the Office has not established a prima facie case of obviousness.

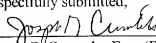
In light of the amendments and remarks set forth above and submitted herewith, Applicants respectfully request that the 35 U.S.C. § 103(a) rejection of claims 1-20 be withdrawn and that a formal Notice of Allowance be issued with respect to claims 1-20.

Application Serial No.: 10/584,869
Applicants: Thomas KOTHE, et al.
Office Action Mailing Date: March 3, 2009
Response to Office Action Filed: August 3, 2009

Docket No. COZ-0535

Should there be any questions regarding the above amendments or remarks, the undersigned attorney would welcome a telephone call.

Respectfully submitted,



Joseph G. Curatolo, Esq. (Reg. No. 28,837)
Curatolo Sidoti Co., LPA
24500 Center Ridge Road, Suite 280
Cleveland, Ohio 44145
Telephone: 440.808.0011
Facsimile: 440.808.0657
Attorney for Applicants

Customer No. 23575

August 3, 2009
Date